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By P. BRYCE, M. D.,
Superintendent Alabama Insane Hospital,
TUSKALOOSA, ALA.

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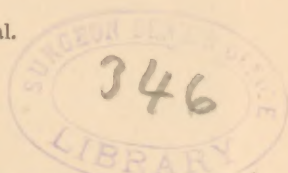


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Moral and Criminal Responsibility.*

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PSYCHOLOGY, or the science of mind, is so intimately associated with all questions of moral responsibility, that any attempt to discuss them independently of each other must prove abortive. Few will have the hardihood to deny that immense strides have lately been made towards the unravelment of many of the mysteries of mind. The most important of these disclosures—the one that is most encouraging to further investigation—is that mind must be studied along with body—that it is the idlest of tasks to attempt any exhaustive study of mind apart from corporeal organization. The old idea that mind is a mysterious entity, independent in its origin and characteristics, of the bodily organism, has been, in countless ways, utterly discredited. Whatever opinions we may entertain of mind in its entirety, however fundamentally its phenomena may seem to be secerned from all principles of physical action and being, we are compelled, in every satisfactory study of it, to regard it as a phenomenon of the nervous organism. For this reason the profoundest interest must continue to attach to comparative anatomy and physiology. It follows too, that we have in the various stages of nervous advance corresponding stages of mind in its development from the simplest sensation to all those complex intellectual and emotional phenomena which are encountered in the higher animals and in man. Not that alone in the nervous centers and fibers, which functionate intelligence, do we find the key to intellectual advance. The late student of psychology knows that intelligence is not a mere matter of nervous

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susceptibility to impressions. The muscular, together with the osseous and other solid structures, play important parts in intellectual development. One of the most interesting points in psychological science, and one that is, perhaps, beyond all others, useful in inculcating the true nature of mind, is the high place which is assigned the muscles in the gradual development of the intellect. The point needs to be especially emphasized, in all popular discussions of mental phenomena, that complexity and definiteness of movement are inextricably conjoined, as essential factors, with that multiplication and definiteness of sensations and perceptions which distinguish the advanced intellect. A proper insistence upon this point will avail to show, as nothing else can, that mental phenomena are not mere adjuncts of the brain and nerves, but that the whole organism is needful to their evocation. Such insistence, too, will further indicate that mind, instead of being that lordly entity, which so many have described, imposed in some mysterious manner on the brain to control all the operations of the bodily organism, is more properly regarded as a creature of that organism, and dependent even upon the gross mechanical details of that organism for the materials of its constitution. As mankind think of their life or health, so they should learn to think of their mind—as a potency conditioned upon the general well-being of the body. To say that one's digestion is disordered, or his intellect impaired, is meant, in either case, that a special function is impeded by some derangement of the organism.

Nor should there be the least hesitation in affirming that there are as many varieties of mind as there are varieties of organism; and that there has been in the past, reckoning by ages, and in the present, by generations, a genesis of mind, just as there has been, and is now, a genesis of organisms. With the theological questions of the differences between the human and lower animal mind, as to immortality, etc., science, as at present informed, has nothing to do. So far as our methods

of scientific research extend, there is no difference except in degree. The human organism is just as subject, as that of the lower animal, to all the laws of development from a formless protoplasm, through various stages of advance, to the perfect individual; and its intellectual advance as rigidly conditioned upon the organic advance. In every view, the old idea of mind, as a separate and superior entity, thrust upon the organism to control its operations, is discredited. The fallacy of the old metaphysical idea of mind as separate from the body is evident from the lately established facts with reference to memory. That peculiar power of recalling the past, which we call memory, is not, so to speak, a unit, but is multiple. It has only lately been shown, by actual experiment, that our memories, like our sensations, have their centers in different regions of the brain. There is, for example, a separate memory of words, things, sounds or colors, each having its special center in the brain, independent of the others, any one of which may be lost while the others remain. The consonance of these disclosures with general observation and experience, must be evident to all. How many persons there are whose memory for one class of facts is good, while for others it is either indifferent or entirely wanting. One man never forgets a face but cannot remember a name. Another is habitually at fault with faces but never forgets a name. Were mind a severe unit such facts would be inexplicable, but to modern psychology the explanation is easily found in the comparative vigor and impressibility of the nerve centers associated, more especially, with sight and sound.

Correct views of the nature of mind can be, in my opinion, inculcated in no way more forcibly than by reference to the principles of heredity. The art of breeding in this century has engaged talents of a high order, and pecuniary means almost unlimited. And the closely observed facts of this most interesting art prove that not general characteristics only, but very minute details of organization, are transmitted to offspring; and not phys-

ical peculiarities only, but intellectual and moral. Countless searching investigations prove that all these principles of heredity are just as true with human beings as with the lower animals. I could fill pages, if time permitted, with interesting illustrations of this truth.

We have in these facts some very pregnant truths with reference to moral responsibility. Every physician knows that there is such a close connection between crime and insanity that the first query on hearing of any astounding crime is, was the perpetrator a person of sound mind? Now insanity, in a great majority of cases, is a result of inheritance. Not that the individual is born insane, but is endowed with a peculiar character of constitution in which the disease of insanity finds a nidus eminently fitted for its development. In other words, there is what is termed the insane temperament, in which there are, though hidden to ordinary examination, imperfect or badly balanced nervous organizations. One very frequent manifestation of such a diathesis is an abnormal state of the feelings or emotions. There are numbers of persons who appear to be rational so far as the reflective faculties of the mind are concerned, but whose emotional states are habitually abnormal. They feel too little or too much, or their feelings are of the wrong kind. Perversion of feeling is often the earliest precursor of insanity, and for the simple reason that mental disease is a dissolution that proceeds in a manner directly opposite to evolution. Well proportioned and adjusted emotions, being the highest product of evolution in mind, is the first to succumb to the stress of incipient disease or dissolution. It is a fact, with which all are familiar, that conduct is not, as a rule, determined directly by ratiocinations, but by the associated emotions. How important therefore to pay the strictest regard to our diet, and other sanitary precautions that are well known to qualify the involuntary impulses of the organization, and through the feelings and emotions to lead up to the highest moral and intellectual achievement. Many persons have declined from noble courses of conduct through

some taint or vice of the blood, so to speak, causing the quantity or quality of their feelings to undergo an abatement, against which the will is as powerless as a steam indicator against a leak in the boiler. In truth it is characteristic of the will-power that it does ^{not} so much inaugurate or impel to special actions or courses of conduct, as it directs and tempers the actions induced by involuntary impulses. In this directive function its power to inhibit comes from its capacity to incite other actions, by turning, as it were, the roused organic forces into other channels or upon other nervous centers. So we see that the ability and disposition to act does not attach to the will but to the involuntary powers, and these in turn are determined by the organic register of the race and individual experience.

From every point of view the idea is intensified of the direct dependence of character and conduct upon organic details. Where the nervous structure is imperfect, as a whole or in any of the parts, there is a necessary departure from the normal mental and moral endowments; for these latter are the castings of which the former are the mould. And this is true not only of great deficiencies of organic structure that are obvious to the most casual observation, but of those minutest details which the microscope is sometimes competent, sometimes incompetent to disclose. The modern psychologist finds no difficulty in the affirmation, of late habitually made, that not only are organic peculiarities hereditary, but also the mental and moral. Anger, fear, envy, jealousy, libertinage, gluttony, drunkenness, and criminality in any or all of its features, are transmitted to offspring, especially if both parents alike possess them.

Although such teachings have been before the public for years, so inveterate are the prejudices and notions with reference to everything that concerns morals, that they do not exercise their proper influence on the convictions of even intelligent men. We never think of casting reproach for any species of incapacity that results

from physical abnormality. We see clearly that it is a misfortune, and not a fault, that many persons are partially or wholly lacking in the perceptions that come through one or several senses, or, as not unfrequently happens, are destitute of any power to appreciate music, or to distinguish one color from another. But we have yet to ingrain into the public mind that there are corresponding multiplied deficiencies of moral endowment.

At a time, by no means remote in the past, insanity was regarded as a demoniacal possession. But the sun of modern science had hardly begun to shine before such an idea was remanded to the limbo of the absurd. But the devils, driven from man's intellect, took refuge in his moral powers. But all the signs of the times indicate that diabolic influences are no more needful to explain the eccentricities and perversities of man's moral powers than his intellectual and perceptive. How forcibly are these truths emphasized by such facts as those which Dr. Drysdale has traced in his history of that most remarkable family known as the "Jukes," extending through seven generations, and including a tabulated report of 709 individuals, every one of whom was either idiot, murderer, prostitute, thief or robber! To suppose that every member of so large a family chose, of a wicked will, to be vicious rather than virtuous, is to suppose what is exceedingly improbable. How much more rational to suppose that their vicious courses of conduct were the natural results of their depraved organizations—of the passing on from parents to children, along with their physical, their intellectual and moral proclivities.

It is not to be understood here that the whole result is due to organization, and no part of it to association and training. These latter must always be credited with decided influences on character; but we must remember how almost inevitable it is that the training of the children of vicious parents should be bad. Apart from their introduction to evil courses through the direct instrumentality of parents, there are laws of attraction and repulsion

in the social, moral world, by which individuals are constrained to group themselves according to their affinities with the good or the bad.

But although, under favorable conditions, education or training may exercise decided influences in the determination of conduct, the most reliable, the most persistent traits of character, are the inherited. And this for many obvious reasons, one of which is, that the fixity of type, or the faithful reproduction of ancestral traits, is nature's only method of fortifying her long and laborious advance from low to high. The laws of life, too, are built upon enjoyment. That which conduces to enjoyment contributes to bodily vigor, in all the animal tribes, high or low. Even in man, as we now see him, the same principle of well being holds; though amid the complexity and deep soundings of his powers the problem of greatest happiness is very often difficult and extremely intricate. But whether facile or hard of determination, happiness is the pole-star of all animal life as we know it. In the struggle for existence the competition is so sharp, that for the multitude, preference will always be given to functions which can be performed with least labor; to say nothing of the fact that the intellect, the tastes, the desires, may, in one view, be regarded as forces, and all forces, in the very nature of things, must expend themselves on lines of least resistance. And this native or inherited adaptedness of the organism for exercising special kinds of activities with facility, is intensified by that principle of the organism which integrates into its substance the spirit of every performed act. With each act there is a decomposition of nerve matter followed by quick repair. But this quick repair is not an exact reproduction of the former tissue, but is that tissue *plus* a qualification imparted by the act. Nor ought it to be forgotten that what is true of the repair of nerve tissue is true of other tissues. Every recomposition of tissue embraces a qualification of it induced by the act that caused its dissolution. This view makes it easy to understand how deeply

all vicious traits of character are intrenched in the laws of life and mind. But it also holds aloft a bright beacon for our encouragement, in the fact, that the qualification of tissue and disposition, due to improved courses of conduct, is handed on down by heredity to the next generation, to be still further improved. And when we remember how potential is education in qualifying bad traits of character and intensifying good ones, one will readily see that on hereditary transmission of newly-acquired traits we have a right to build the most enthusiastic expectations of human advance. By education, of course, is meant a theoretical and practical knowledge of nature, her laws, and man's relations to them, and of the principles of moral and social science, together with such convictions of the beauty and excellence of virtue as will habitually lead up to just and noble courses of conduct.

The dependence of character on organism is further enforced by attention to the multiplied phenomena of human life that have their origin in climate. The subject is so vast, the forces so intermingled with other recognized factors of environment in evolution, that the briefest glance must suffice. Dr. John W. Draper has written a treatise upon this subject that fairly bristles with interesting facts. Amid a multitude of other considerations the influence of climate is evident from a truth now almost universally conceded, that we have in the European and African races the same primitive race, subjected for ages to very different climates. Although we cannot repeat evolutionary race marvels, any more than we can repeat any other marvel of evolution, for lack of the almost infinite periods of time and infinite variations of surroundings which were prime factors of all evolutionary results, we can plainly see some of the smaller effects of climate in the difference between the inhabitants of southern and northern Europe, and in the changes wrought in Europeans by transportation to hot countries—changes that would unquestionably be much more pronounced but for the intercourse maintained with the mother country. There are indeed a

number of very obvious causes of the change referable to climate. In hot countries the function of the skin is so augmented as to induce a sort of revolution of the whole internal economy, by its supplantation of the office of the various other excretory organs. In cold or mild climates too, labor is a luxury, the chief joy of life, while in hot countries it is an excruciating task. It is easy to see how the listlessness and idleness, begotten of the heat, by dwarfing the muscles and the cerebral ganglia presiding over them, should scrimp the perceptions, the ratiocinations, the nobler emotions, the volitions, and thus give to the inhabitants characters essentially different and inferior to those of colder regions.

Nothing could be more evident to the most casual observation than that animals are as broadly distinguished from each other by their intellectual and moral as by their organic traits; and that every possession of a like organism is endowed with like intellectual traits. These facts, while of the utmost significance, are in a great measure disregarded, owing to the prejudices of forestalled conclusions with reference to the independent subsistence of mind, or instinct, or both. Yet there could hardly be a more forcible illustration of the dependence of character on organism. Even for the slight differences of intellectual and moral endowment in the same variety or family, we have an easy and satisfactory explanation in the necessary differences of the details of their organization. Of any number of dogs or horses, each will manifest traits of disposition peculiar to it alone. Of two dogs, by the same parents, at the same birth, one may be amiable and docile, and the other combative and intractable. In the case of these and other animals everyone is ready to refer the differences of behavior to the right cause, namely, to the differences of their minute organisms. But when in a human family two children are similarly distinguished, the one is called a good, and the other a wicked child. Yet nothing is more certain than that the docility and perverseness in the case of the children are as much the outcrops of

the special organization as in the case of the lower animals. Even the evanescent change of constitution following the ingestion of alcohol, or other narcotics, is fruitful of just such results as flow from confirmed bents of character. Now the narcotic could hardly be thought to qualify the intellectual and emotional processes except through the cerebral organization; and the fact that the thinking and emotional forces wax and wane with organic vigor, shows that they are in some way reflections or derivations of that organism. And how further manifest does this become when it is remembered that moral pain, remorse or sorrow, like physical pain, is augmented or lessened by the augmentation or diminution of blood. There is too a world of significance in those radical changes of character which so often supervene on injuries to the head, or on puberty, and the change of life in women. Within my own knowledge a man of highest intelligence, irreproachable character and the kindest feelings, was converted, by a fall upon his head, ~~fracturing his head~~, fracturing his skull, into a very demon. He became deceitful, cruel and vicious in the extreme, and had to be committed for safe-keeping to a hospital for the insane. He remained in this condition until relieved by operation, of the pressure upon his brain, after which he almost instantaneously lost his immoral traits and resumed his former unexceptionable character. Could anything prove more plainly the dependency of mind and moral qualities upon the integrity of the brain structure?

The study of mind by metaphysical methods has heretofore, through the thousands of years that it has been attempted, proved utterly barren of all practical results. Any attempt, in fact, to unravel the complex phenomena of the mental processes, without the bright light which modern science, and especially the Darwinian theory of development throws upon it, would be as fruitless of results as the study of physiology without a knowledge of comparative anatomy. Modern scientific methods have accomplished the miracle, so to speak, of unifying all the

phenomena and forces of the universe, by demonstration of the one great truth—the presence and constancy of nature's laws. Now the most obvious corollary of the indefectibility of law is the rigid determination of every consequent by its antecedents, or every effect by antecedent causes. If there were exceptions to this rule anywhere in nature, she would be capricious, and anything like a progressive science would be altogether unattainable. Mind, as one of the phenomena and forces of the universe, must be conditioned, in its origin and all its stages, by this universal principle of the reign of law—effect and cause. To say that in the mind of man are encountered exceptions to this universal law of cause and effect, is to resort to the antiquated device of regarding inscrutable phenomena as without the pale of law, instead of being determined by laws not fully understood. There cannot be predicated a reign of law in nature, if her most interesting phenomena and forces, those of mind, be not subject to it.

The foregoing principles of mind, in their practical bearing upon Moral and Criminal Responsibility, open up one of the most absorbing questions of the day. Penal reform, or the proper treatment of criminals, as everyone knows, is already engaging the time and talents of the statesman and philanthropist. If what we have said be true, it must be apparent that lawlessness and crime are not, as we have been commonly taught to believe, the results of willful perverseness, but are the inevitable outcrops of organizations, corporeal and mental, not yet brought into harmonious relations with the principles of civilized society. To the question: "Why is one man a criminal?" "I answer," says Dr. W. G. Stevenson, in his late learned essay on "Criminality," "for the same reason that another is a moralist, or an honest, law-abiding citizen. Criminals are such either because they inherit a brain structure potentially incapable of generating moral qualities, or, through the influence of unfavorable environment the development of mind does not evolve sufficient moral

strength to guide and control the lower propensities of the man's nature."

It is fashionable in certain quarters to speak of this as a *diseased* condition, and accordingly we have all sorts of high-sounding names, such as kleptomania, pyromania, erotomania, etc., indicating the peculiar type of criminal or immoral conduct. Even so great an authority as the learned Despine, whose investigations of crime and criminals has been both profound and extensive, speaking of this class of persons, says, "there must be something abnormal in the disposition of criminals, when they yield with the utmost facility to desires which would excite the strongest repugnance and horror in a truly moral man. Does not this abnormal state reveal itself in the clearest manner, when, contrary to what poets and moralists have represented, we see the wretch who has committed crime exhibiting no symptoms of remorse, but rather a disposition to repeat the same criminal act?" With the highest respect for this learned authority, and for others who would charitably cover with the mantle of disease these extraordinary manifestations of immoral and criminal conduct, we do not find it necessary to resort to this theory of disease to explain these departures from the standard of moral rectitude, which society has established for its protection. Deficient or undeveloped nerve centers does not constitute disease of the brain, or insanity, any more than a departure from some arbitrary standard of physical strength constitutes disease of the muscles. Men vary in mental and moral qualities as they do in physical aptitudes, according to their constitutions.

Mr. Brockway, of the Detroit House of Correction, in a paper before the International Penitentiary Congress says: "The species of crime to which a person is addicted depends upon the circumstances which surround him, or upon inherited tendencies, or both, but whether a man will commit a crime at all, depends, in a great degree, upon his constitutional characteristics." He argues the existence of moral imbecility, incoherent mental

development and feebleness of will-power, and affirms that "this undeveloped state, this paralysis, as it were, of the moral faculties, though, no doubt, largely due to the want of proper early education, is more often inherited from progenitors." "Glancing at mankind as a whole, what," asks Despine, "do we see? Anomalies, monstrosities. In a physical point of view, by the side of men well-formed, of robust health, of beautiful and noble forms, we find beings sickly, weak, ill-shaped, puny. Viewing men intellectually, what do we see? The same differences. By the side of men of genius, who create sciences, who produce the marvels of imagination, which in literature and the arts excite our enthusiasm, we find vulgar intelligences, insensible to the creations of genius and the splendors of nature, incapable of lifting themselves above the direction of their business and the material wants of life. Descending in the scale, we meet, at last, with the weak-minded, the imbecile, the idiot. These natural imperfections, these anomalies, these infirmities, these monstrosities, which we see in the physical and intellectual world exist also in the moral, as marked, as numerous and as varied. Just because the man is in health, because he has command of his ideas, because he reasons, because he is intellectually intelligent it has been thought he must be also morally intelligent."

Quoting once more from the very highest authority, we are told by Dr. Maudsley in his "Body and Mind," that "at the end of all the most subtle and elaborate disquisitions concerning moral freedom and responsibility, the stern fact remains that the inheritance of a man's descent weighs on him through life as a good or bad fate. How can he escape from his ancestors? Stored up mysteriously in the nature which they transmit to him, he inherits not only the organized results of the acquisitions and evolution of generations of men, but he inherits also certain individual peculiarities or proclivities which *determine irresistibly the general aim of his career*. While he fancies that he is steering himself and determining his

course at will, *his character is his destiny*. The laws of hereditary transmission are charged with the destinies of mankind." Again he says, "There is a destiny made for man by his ancestors; and no one can elude, *were he able to attempt it, the tyranny of his organization.*"

The conclusion, in fact, in whatever light you view it, is irresistible, that all the actions of man, physical, intellectual and moral, are the inevitable consequences of preceding circumstances and conditions which absolutely control and dominate him. I have given so many proofs of this in the course of this essay that it would be useless in conclusion to do more than redirect attention to the very current fallacy respecting the so-called freedom of the will. Mr. Herbert Spencer, with the depth and lucidity which characterizes all of his philosophical utterances, thus clears up the difficulty with reference to this important point: "That everyone is at liberty to do what he desires to do (supposing there are no external hindrances), all admit. But that everyone is at liberty to desire or not to desire, which is the real proposition in the dogma of free-will, is negated by a variety of considerations." The error with regard to the will, very exactly resembles that which was long prevalent with reference to the lower organisms—that they were spontaneous productions of nature, and not the outgrowth of previous organisms. Now as scientific advance emphasizes the conclusion that all present life is a product of previous life, and is rigidly conditioned upon its character, so all intellectual manifestations are as rigidly conditioned upon antecedent states. In other words, that the principle of development, or orderly growth, holds with reference to mental as to corporeal powers. The will, as one of the constituents of mind, either conforms to this law of orderly growth or development, or it must be absolutely free from all the bias of present circumstances or previous experiences, than which nothing could be more absurd. The truth is, every mental act, like every corporeal, is determined by two factors, the external circumstances, and all the previous exercises

of mental acts registered in the organism. The will must be either conditioned or unconditioned by previous acts. If it is thus conditioned, it is not free, in the usual sense attached to the expression. If it is not thus conditioned, then its acts are utterly arbitrary and haphazard, and anything like a science of mind is the vaguest of idle dreams.

"Let the mind be free, in the full metaphysical sense of the word," says Dr. Maudsley, "and it would be impossible to run an express train ~~from~~ London to York, or to cross the Atlantic in a steamboat, with the least assurance of safety. Did not men in some measure foresee the acts of their fellows from a knowledge of the operations and motives in their minds, they would have to await them in helpless uncertainty, as they await the decrees of the will of God."

Interesting and instructive as the foregoing array of facts and principles are to the student of psychological science, they have a much wider and higher significance to the jurist, the philanthropist and the statesman. As a ground-work of penal reform, and of complete change in our present system of criminal jurisprudence, they are especially worthy of consideration. In their application to our present methods of criminal procedure it is plain that many great and radical changes are called for. In the first place our courts must get rid of the current ideas of responsibility growing out of the old metaphysical conception of mind as an entity separate and distinct from the organism, and yet governing and controlling arbitrarily its movements and volitions. It must divest itself of the dogma of free agency as taught by the metaphysical school of philosophers, and recognize the fact that crime is the culmination of certain impulses which the criminal is powerless at the time to resist.

It will not do to insist, as the law now does, that the criminal had the power to choose between right and wrong, and to do the one or avoid the other. While it may not be denied that he had a perfect knowledge of right and wrong, and was fully aware of the consequences

of his act, yet it will not do to insist that he had, at the time of its committal, any power to have acted differently. While it is true, in a restricted sense, that knowledge is power, it is no less true that it is powerless to restrain the impulses that dominate the organism and control the individual. The man's acts must be regarded in every instance as the inevitable outcome of his organization, that is to say, of certain varying states or conditions of the nervous centers which preside over the actions of the individual and control his movements and volitions.

And this rule should apply invariably to all classes of criminals, irrespective of their various degrees of mental and moral capacity, or the character and circumstances of the crime committed. Maudsley, in his admirable treatise on "Body and Will," makes three classes of criminals, the first of which, the hereditary or habitual criminal, he describes "as the victims of a bad organization who are urged into crime by instincts whose natural restraints are wanting, whatever their circumstances in life, and are not to be reformed by instruction, or by example, or by correction," these he designates "*nature-made criminals*." Another class, "comprising those who not being positively criminally disposed by nature, but who yet fall into crime in consequence of a gradually increased or suddenly inflicted pressure of adverse circumstances," he calls "*circumstance-made criminals*." And between these two classes, which occupy the two extremes of the scale, he designates still another, "comprising those who, having some degree of criminal disposition, would have been saved from crime had they enjoyed the advantage of a good training and of favorable environments, instead of growing up without education and amidst criminal surroundings." But besides these well-recognized classes of Dr. Maudsley, there is still another class, known as "*insane criminals*," whose lawless proclivities are the result of a change of character due to disease of the brain.

But what we wish to insist upon more especially is, that in each and all of these classes, the moral value of

the criminal act is precisely the same; or still more definitely, that it has no moral value—the lawlessness in every case growing out of the inability on the part of the individual to conform to the requirements of the law. In other words, to whatever source the criminal act may be immediately traced, whether to bad heredity; evil associations, pressure of adverse circumstances, insanity, idiotcy, or diseased brain action arising from alcohol or other toxic agent, its moral aspect is invariably the same, and is in every case the result of an inability to resist certain influences urging the offender in a prohibited direction.

The insane man whose powers have been dethroned by disease, and the idiot, whose brain, in consequence of defective organization, is unable to supply the motive for self-control, the practice of the courts has always been to acquit of all crime. But in the other classes, described by Dr. Maudsley, the wrong doer is held by law to a strict accountability for his criminal acts. He is not only restrained by imprisonment from repeating them, but in many cases subjected to corporeal punishment both cruel and resentful. Whatever may be the theory of the law respecting the vengeful character of punishment, our daily observations teach us that it is often tolerated by the courts, and as often practiced by officials in their dealings with the criminal classes. "Pity it is," says Dr. Maudsley, "that no better use is made of beings so mal-organized as to be utterly incapable of moral sensibility, and therefore of repentance and reform, than to punish them with sufferings which do them no good, and after that to turn them loose again upon society in which they can make no living room for themselves except by crime." Revenge, it is clear from the foregoing exposition of the genesis and operation of mind, should have no place in prison discipline. It is unscientific, to say the least of it, and what is true in science cannot be false in law, in morals or in religion.

But the point we wish here more especially to enforce is, that all violators of law and order, without respect to

their mental or moral capacity or to the class of criminals to which they belong, should be held alike to a strict legal accountability for the lawless acts they may commit. To illustrate this position take the case of the habitual law breaker. Enough has been said to show that, for a variety of causes, he has become incapable of discharging the duties of good citizenship. Whatever his original characteristics, his nature has become so depraved that it is as utterly impossible for him to change his bad methods of living as for the Ethiopian to change his skin. And the same may also be said of the confirmed inebriate. Whether the habit for drink has been acquired, or transmitted through a line of neurotic ancestors, he can no more lead a sober life than he can lift a weight that is far beyond his strength. There are individuals too, with apparently sound intellects, who are utterly wanting in moral sensibility, just as some persons are deficient in power to appreciate melody. To some men a negro melody has all the charms of the noblest creations of a Mozart or Beethoven. The heavenly inspirations of every gifted son of song pass them by, because nature has stunted their musical capacities. Multiplied observations in every part of the world leave no room to doubt that the forces of the mind are marvelously compounded, and one or several of these faculties may be stunted in various degrees without impairment of the others, just as a person may have excellent eyes for form and yet be deficient in power to distinguish colors. That the intellect is often apparently normal, and yet the moral faculties absent or dwarfed, there is no room to question. Cases of this kind are continually coming up in our courts to puzzle the judges and confound the juries. These moral imbeciles, for that is their proper name, though not insane, are utterly incapable of conforming to the requirements of well ordered society, and so habitually do violence to the moral instincts of those around them.

Now each and all of these separate classes of offenders—the habitual criminal, the inebriate, the moral imbecile,

and we might add the idiot and the lunatic, are to be held alike amenable to the laws of the land. In the protection of society, offenders of every class and grade should be held to a strict legal accountability; for an injury is an injury by whomsoever committed. There should be no such thing as acquittal for crime. And this universal legal accountability involves the right of the courts not only to deprive the law-breaker of his liberty, and if needs be of his life, but to keep him in restraint until it is safe to restore him to society.

Clearly the two-fold object of law is the protection of society, and the prevention of crime. But crime cannot be prevented by imprisonment alone; there must go along with it the reformation of the criminal. It must therefore be evident that any attempt to align our criminal jurisprudence with the advances made in scientific psychology involves the establishment of reformatories, where the proper corrective and educational devices may be brought into successful operation. Mere punishment does not reform. Past ages, as well as our common, every-day observation, have taught us this lesson in a way that leaves us no room to question. To reform the vicious there must be brought to bear on them influences closely related to those by which good characters are formed in every well conducted family. Our reformatories, in fact, should bear very much the same relation to the criminal classes that our schools and colleges do to the ignorant masses. There must be instruction, discipline, industry, and last but not least, sympathy and affection. So long as fear alone is appealed to, so long will the criminal be hardened in crime. But when the State has demonstrated to evil doers, through her courts of justice, that it hates the crime and not the criminal—that its object is to build up and reform the character and not to inflict needless pain upon the body—that while protecting society from evil-doers it recognizes a similar obligation to protect and reform the evil-doer himself, what encouragement will hus be held out to these poor, pitiable victims of a

tyrannous organization to avail themselves, as far as possible, of all the means and influences invoked for their reformation.

It is further evident, as the protection of society is the end aimed at, and reform the only reliable means, that the terms of confinement for criminal offences should be indeterminate, that is, longer or shorter, according to the nature of the crime, and the evidence the criminal may give of his thorough reformation. I say nature of the crime, because there are criminal acts of such a revolting and atrocious character that public policy, as well as public safety, might demand the perpetual confinement of the criminal. No criminal should be discharged from custody who is not qualified intellectually and morally to respect the rights of others. If incapable of reform, as a large proportion of the habitual criminals are, they should be confined for life irrespective of the crime committed. It is worse than folly to turn such dangerous characters loose upon society, as we are now doing, to repeat their criminal acts.

And to secure the real ends of their creation, these reformatories should be sufficiently numerous and capacious to admit of a rigid classification of inmates. To mingle the several classes of criminals together would be to nullify, in advance, all efforts for the improvement of their habits and character. As no two criminals, even of the same class are exactly alike in their characters and capacity for reform, it follows that their treatment and time of detention, even for the same offence, should not be the same. This is an additional argument against the system of fixed sentences, prescribed by statute, and pronounced by the judge or juries.

For criminal inebriates or lunatics, special provision should be made, and like other criminals they should be detained in custody until cured of the habit of drink, or disease of the brain, as the case may be. To acquit the lunatic or inebriate of legal accountability, as the courts now do, and, where provision is not specially made for

their confinement in hospitals for the insane, to turn them loose upon society to recommit their criminal acts, is, to say the least of it, the height of folly.

But in addition to the system of reformatories and hospitals for inebriates and the criminal insane, there will be needed under the new *regime*, a commission selected with special reference to their fitness to ascertain the mental, moral and physical condition of criminals, to prescribe their treatment and determine the time of their detention in the reformatory or hospital. For such a task the average juryman would be totally unsuited. The function of the jury should cease when it has ascertained the guilt or innocence of the accused. While it is admitted that the duties of such commission will be extremely difficult, and perhaps not always satisfactorily performed, still there is good ground to believe that suitable men can be found in every community to whom such duties might be safely intrusted.

It is not within the scope of this paper, already too lengthy for the occasion, to do more than present, in faintest outline, some of the changes that must supervene upon the application of the foregoing views of Moral and Criminal Responsibility to our methods of criminal jurisprudence. Enough has been said, however, to indicate the general direction which such changes would naturally take. The systematic writer on criminal jurisprudence will some day supply the details, and it is hoped, and confidently believed, will perfect a system of legal procedure, not only in accord with the demands of an exact science, but with the humane sentiments of the enlightened and progressive age in which we live.

